

No. P 8927-10
Suff No. B 7636-07 EY

SUPPLEMENTAL REISSUE DECLARATION

We, as the below-named inventors, hereby declare that our residences, post office addresses, and citizenships are as stated below adjacent our names, that we verily believe we are the original, first and joint inventors of the invention described and claimed in Letters Patent No. 5,235,581, issued August 10, 1993, and in the specification filed August 5, 1991, and for which invention we solicit a reissue patent; that we have reviewed and understand the contents of the specification in the present application filed November 22, 1999, including the claims; that we understand this is a continuation application of reissue application no. 08/396,981 which issued as RE 36,445 on December 14, 1999 and which was a reissue of said Letters Patent No. 5,235,581 issued August 10, 1993; that we acknowledge our duty to disclose information of which we are aware which is material to the examination of this Reissue Application No. 09/609,699 in accordance with Title 37, Code of Federal Regulations, §1.56(a); and that no application for patent or inventor's certificate on this invention has been filed in any country foreign to the United States prior to filing of Application Serial No. 740,629 filed August 5, 1991 (from which Patent 5,235,581 issued) by us or our legal representatives or assigns, except as follows:

Japanese Patent Application Nos. 02-212537

filed August 9, 1990, 02-285006 filed

October 22, 1990, and 03-044798 filed

March 11, 1991.

The priority of Japanese application nos. 02-212537, 02-285006 and 03-044798 was claimed in said U.S. application and is also hereby claimed in this Reissue Application and certified copies are available in the patent file.

We further declare that we believe said Letters Patent is, through errors which arose without deceptive intent on the part of the applicants, wholly or partially inoperative by reason of claiming more or less than we had a right to claim in the patent. We hereby provide a statement of at least one error relied upon to support this reissue application, in that the original patent failed to include a claim of the scope of: "An optical recording/reproducing apparatus for recording, reproducing or erasing an information signal onto/from any one of N types (where $N \geq 2$) of optical discs having first layers of different thicknesses, each type of said optical discs having at least said first layer being transparent and a second layer for storing information, said apparatus comprising: a light emitting means for emitting a light flux; a converging means having M different effective numerical apertures for converging said light flux on said second layer of ones of said

N types of optical discs loaded in said apparatus and performing aberration correction in correspondence with said first layers of said N types of optical discs loaded in said apparatus; and a photo detecting means for detecting reflected light through said converging means from said ones of said optical discs loaded in said apparatus and for outputting the detected reflected light as an electrical signal, wherein said converging means converges said light flux as a spot with a smaller diameter D by employing a larger one of said M effective numerical apertures, with respect to one of said optical discs having a thinner one of said first layers, wherein a thickness of said first layers of each of said N types of optical discs is about 1.2mm or less, and wherein the thickness of said first layer of the one of the optical discs loaded in said apparatus is discriminated by said electrical signal." This represents an "error" in the original patent under 35 USC 251.

In accordance with MPEP 1414.01, the Applicants hereby state that every error in the patent which was corrected in the present reissue application, and is not covered by the prior declaration submitted in this application, arose without any deceptive intention on the part of the Applicants.

We hereby appoint the following as our attorneys of record with full power of substitution and revocation to prosecute

this application and to transact all business in the Patent and Trademark Office.

James E. Ledbetter, Registration No. 28,732;
Thomas P. Pavelko, Registration No. 31,689; and
Anthony P. Venturino, Registration No. 31,674.

All correspondence in connection with this application should be sent to:

James E. Ledbetter, Esq.
STEVENS DAVIS, MILLER & MOSHER, L.L.P.
1615 L Street, N.W., Suite 850
Washington, D.C. 20036
Telephone: (202) 408-5100
Facsimile: (202) 408-5200

We, as the undersigned inventors, further declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the reissue application or of any reissue patent to issue thereon.

Naoyasu MIYAGAWA

Naoyasu Miyagawa
(Signature)

Dec. 6, 2004
(Date)

Residence: Suita-shi, Japan

Citizenship: Japanese

Post Office Address: 17-21-202, Fujigaokacho, Suita-shi, Japan

Yasuhiko GOTOH

Yasuhiko Gotoh
(Signature)

Dec. 13. 2004.
(Date)

Residence: Kadoma-shi, Japan

Citizenship: Japanese

Post Office Address: 5-1-710, Yanagimachi, Kadoma-shi, Japan

Date: November 16, 2004
 To: Nabil Hindi, AU 2655
 Via: Doris To, SPE
 From: Dwayne D. Bost, SPRE 2600, PK2-8A37
 Re: Final Reissue Review 09/609,699

The following comments must be addressed before the Notice of Allowance can be mailed:

1. Please make sure amendment of 9/9/04 is entered in order to account for all related reissues.
- ✓ 2. There is more than 1 Abstract pending. There should only be one (see flags).
3. The declarations are defective and a new declaration is required. In accordance with MPEP §1414 and 37 CFR §1.175, Applicant must specify the error upon which the reissue is being filed. It is NOT sufficient to merely state that Applicant is broadening and narrowing the claims, thus departing from the scope of the Patented claims, and thus that is the error. It is NOT sufficient then for Applicant to identify claims and indicate what subject matter the claims contain and state that this is the error. In accordance with MPEP §1414, Applicant needs to specifically identify by reference to the claim(s) (if this is where the error is) and the specific claim language (via word, phrase or expression) wherein the error lies.
4. There is an un-initialed Bib sheet on the right outside of the application jacket (see flag).
- ✓ 5. Amendment D does not comply with 37 CFR §1.173(b) where in entire columns have been proposed for entry. In reissue applications, amendments are to be made via paragraph substitution. There is no provision for column, page or entire specification substitution.

PLEASE PROMPTLY CORRECT ALL OF THE ABOVE AND THEN RETURN THE FILES TO THE SPRE UNIT WHEN THEY ARE READY FOR ISSUE.

37 CFR §1.177. Issuance of multiple reissue patents.

(a) The Office may reissue a patent as multiple reissue patents. If applicant files more than one application for the reissue of a single patent, each such application must contain or be amended to contain in the first sentence of the specification a notice stating that more than one reissue application has been filed and identifying each of the reissue applications by relationship, application number and filing date. The Office may correct by certificate of correction under § 1.322 any reissue patent resulting from an application to which this paragraph applies that does not contain the required notice. [emphasis added]

MPEP §1414 [R-2] Content of Reissue Oath/Declaration

All that is needed for the oath /declaration statement as to error is the identification of "at least one error" relied upon. In identifying the error, it is sufficient that the reissue oath /declaration identify a single word, phrase, or expression in the specification or in an

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original claim, and how it renders the original patent wholly or partly inoperative or invalid...

It is not sufficient for an oath /declaration to merely state "this application is being filed to correct errors in the patent which may be noted from the changes made in the disclosure." Rather, the oath /declaration must specifically identify an error. In addition, it is not sufficient to merely reproduce the claims with brackets and underlining and state that such will identify the error. See *In re Constant*, 827 F.2d 728, 729, 3 USPQ2d 1479 (Fed. Cir.), cert. denied, 484 U.S. 894 (1987). Any error in the claims must be identified by reference to the specific claim(s) and the specific claim language wherein lies the error. [emphasis added]

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STEVENS, DAVIS, MILLER & MOSHER, L.L.P.
1615 L Street, NW, Suite 850
Washington, DC 20036

THE PATENT AND TRADEMARK OFFICE OFFICIAL FILING DATE STAMP HEREON IS
ACKNOWLEDGMENT OF FILING:

XX Amendment

APPLICANTS: Naoyasu MIYAGAWA, et al.
APPLN. NO.: 09/609,699
TITLE: OPTICAL RECORDING/REPRODUCING APPARATUS FOR OPTICAL DISKS
WITH VARIOUS DISK SUBSTRATE THICKNESS
DATE: November 22, 1999
DOCKET NO.: JEL 28567RE-B

Date Filed: September 9, 2004
Old Due Date: None
New Due Date: Oct. 9, 2004- SIL

Attorney Initials: _____